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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

STATEMENT OF THE CHAIRMAN OF THE PREPARATORY COMMISSION

1. During this session, the Plenary dealt with the following matters:

(a) Organization of work;

(b) Consideration of the draft provisional final report by the Informal Plenary;

(c) Implementation of resolution II;

(d) The Training Panel;

(e) Future work of the Preparatory Commission;

(f) Consideration of the draft provisional final reports of the Preparatory Commission.

I. ORGANIZATION OF WORK

2. On 22 March 1993 the Plenary, on the recommendation of the General Committee, adopted a programme of work for the current session of the Commission which enabled all the Special Commissions and the Plenary on the Authority to meet. As in the past the programme was adopted on the understanding that changes would be made as circumstances required. In accordance with the decision of the Preparatory Commission, the Training Panel met during the first week of the current session of the Preparatory Commission.

II. CONSIDERATION OF THE DRAFT PROVISIONAL FINAL REPORT (LOS/PCN/WP.52) BY THE INFORMAL PLENARY

3. At the eleventh session of the Preparatory Commission, the Informal Plenary held four meetings, all of which were devoted to the consideration of the draft provisional final report of the Plenary. That report contained three addenda which were circulated in documents LOS/PCN/WP.52 and LOS/PCN/WP.52/Add.1-3. Documents LOS/PCN/WP.52/Add.1 and Add.2 contain documents relevant to the implementation of resolution II of the Third United Nations Conference on the Law of the Sea. Document LOS/PCN/WP.52/Add.3 contains the draft rules of procedure for the organs of the Authority, the final draft agreements concerning the relationship of the Authority with the United Nations and with the Government of Jamaica regarding the Headquarters of the Authority, the final draft Protocol on the Privileges and Immunities of the Authority and the document on the administrative arrangements, structure and financial implications of the Authority.

4. The Informal Plenary decided that the text of its report should be divided into three parts: Introduction, Implementation of resolution II and Plenary on the Authority. The Informal Plenary proceeded to examine the report, paragraph by paragraph, and decided to make the following changes.

(i) The Introduction:

5. It was agreed that the first part of the report, entitled "Introduction", should include paragraphs 1 to 8 of the draft provisional final report. Paragraphs 58 and 59 of the present text of the report will be deleted. However, it was understood that some of the references contained in those two paragraphs, which were not mentioned in the eight introductory paragraphs, would be incorporated into the Introduction. In this regard, reference, in particular, was made to the provision of paragraph 58 stating that the issues related to the implementation of resolution II had been considered by the Preparatory Commission as a matter of high priority.

Paragraph 2, lines 1 and 2, should read:

"2. The Third United Nations Conference on the Law of the Sea established by resolution I the Preparatory Commission for the International Seabed Authority and for the ..."

Paragraph 8 bis:

Add the following:

"The Draft Principles, Policies, Guidelines and Procedures for a Preparatory Commission Training Programme provided that the Training Panel will: (i) evaluate performance reports in the event that designated persons are selected for further training; (ii) keep the programme under review particularly with respect to established priorities, scheduling and financial implications, taking into account also the experience gained by both registered pioneer investors and trainees; and submit an annual

progress report to the Preparatory Commission on the training provided, including information on all expenditure made under the programme."

Paragraph 8 ter:

On 2 September 1985 the Preparatory Commission adopted a declaration on the issue of unilateral legislation stating that:

"(a) The only regime for exploration and exploitation of the Area and its resources is that established by the United Nations Convention on the Law of the Sea and related resolutions adopted by the Third United Nations Conference on the Law of the Sea.

"(b) Any claim, agreement or action regarding the Area and its resources undertaken outside the Preparatory Commission which is incompatible with the United Nations Convention on the Law of the Sea and its related resolutions shall not be recognized." (LOS/PCN/72)

(ii) Implementation of resolution II of the Third United Nations Conference on the Law of the Sea:

6. The following are the amendments made to this section:

Paragraph 9, line 5:

After expertise insert the following sentence:

"It was also recognized that there was a need to ensure that the Enterprise will be provided with the funds, technology and expertise necessary to enable it to keep pace with States and other entities."

Paragraph 16, line 11:

For self-selection of areas, read self-selection of the pioneer areas.

Paragraph 17, lines 3 and 4 should read:

"... the Group of 10, representing the Group of 77, and the Group of 11, also known as the Friends of the Convention, as well as China."

Insert a new paragraph 22 bis, reading as follows:

"The procedures and mechanisms outlined in the understanding were devised in order to overcome practical difficulties in the implementation of resolution II and to facilitate the early registration of the first group of applicants as soon as possible."

Insert a new paragraph 22 ter, reading as follows:

"The procedures and mechanisms were essentially designed for the registration of the first group of applicants as pioneer investors under

resolution II and constituted an integrated package to be implemented as a whole. They shall be respected by all concerned."

Paragraph 25

The first sentence of paragraph 25 will become the second sentence of paragraph 24.

Paragraph 28

At the end of this paragraph add the following:

"The General Committee also designated a part of the application areas to be reserved for the conduct of activities by the Authority in the Area through the Enterprise or in association with developing States."

Paragraph 33

At the end of the paragraph add

"... and shall be free of costs to the Preparatory Commission."

Insert a new paragraph 40 bis, reading as follows:

"Each registered pioneer investor participating in the activities under paragraph 7 of the understanding shall submit a comprehensive annual report to the Preparatory Commission on the type and extent of activities undertaken by it and details of expenditures incurred during that year, as well as a list of data and information gathered as a result of these activities."

Insert a new paragraph 52 bis, reading as follows:

"The registered pioneer investor, the China Ocean Mineral Resources Research and Development Association (COMRA), agreed to undertake a programme of exploration, in accordance with the provisions of paragraph 12 (a) (i) of resolution II, of one mine site for the Enterprise in the area designated as the reserved area for the conduct of activities by the Authority."

Paragraph 57 should read:

"In more general terms as far as resolution II is concerned, the task of the Preparatory Commission is to continue its implementation, including the monitoring of the obligations of the registered pioneer investor IFREMER/AFERNOD and its certifying State, France; of the registered pioneer investor DORD and its certifying State, Japan; of the registered pioneer investor Yuzhmorgeologiya and its certifying State, the Russian Federation; the registered pioneer investor, India; the registered pioneer investor COMRA and its certifying State, the People's Republic of China; and of the registered pioneer investor IOM and its certifying States, the Republic of

Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic,* the Republic of Poland and the Russian Federation. These obligations are respectively contained in the statement on the implementation of resolution II (LOS/PCN/L.41/Rev.1, annex), the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex), the understanding on the fulfilment of obligations by the registered pioneer investor COMRA and its certifying State, the People's Republic of China (LOS/PCN/L.102, annex), and the understanding on the fulfilment of obligations by the registered pioneer investor IOM and its certifying States, the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Russian Federation (LOS/PCN/L.108, annex)."

(iii) The Plenary on the Authority

7. The Informal Plenary agreed on several drafting changes to be introduced into this part of the report.

8. It was agreed that the following new paragraphs should be inserted after paragraph 124:

"With regard to elections to the organs of the Authority the main differences of views may be summarised as follows:

"(a) Many delegations expressed the view that elections to the organs of the Authority should be treated as a matter of procedure requiring a simple majority consistent with the practice in the United Nations system and other international organizations; that the Convention was careful to provide the categories to be classified as substance and elections were not included in these categories. In any event the Convention provided that if a question arises as to whether a matter was a matter of substance or procedure the question would be treated as one of substance unless otherwise decided by the majority required for decision of election.

Other delegations contended that elections were a matter of substance and should be decided by a two-thirds majority. Some delegations maintained that certain positions, such as the President of the Council were of such importance that it was necessary to demonstrate that these office holders were supported not merely by a simple majority.

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* On 25 November 1992, the Federal Assembly of the Czech and Slovak Federal Republic adopted Constitutional Law No. 542 which terminated the existence of the Czech and Slovak Federal Republic; the Law came into force on 31 December 1992. The legal successors to the Czech and Slovak Federal Republic are two sovereign States: the Czech Republic and Slovakia. The Czech Republic and Slovakia were both admitted to membership in the United Nations on 19 January 1993.

"(b) Another matter discussed centred around elections to the Council.

Some delegations proposed that the elections should ensure that the eight largest contributors to the Administrative Budget of the Authority were elected to the Council.

Many delegations argued that such a proposal would be inconsistent with the provisions of the Convention which struck a fine balance between representation for special interests and equitable geographical representation.

"(c) Governing Board of the Enterprise

A similar proposal was made in respect of the Governing Board of the Enterprise by providing that due regard should be paid to equitable geographical distribution as well as expertise in financial fields, particularly those relevant to deep seabed mining, in such a way that eight of the members of the Governing Board shall be elected from among candidates proposed by the eight States Parties which account for the largest proportions of the sums initially made available for payment or guarantee to the Enterprise.

Many delegations were opposed to this proposal, contending that the Enterprise is an embodiment of the common heritage of mankind and that the proposal would not only be inconsistent with the Convention but give a disproportionate representation to some countries."

9. In connection with the consideration of the hard-core issues the Informal Plenary also decided that at the end of section A of part III of the report ("Preparation of draft rules of procedure for the organs of the Authority") the following three new paragraphs should be added:

"125 bis

"In the course of the consultations held during the sessions of the Preparatory Commission on the hard-core issues, different views were espoused by delegations. These are to be found in the different Statements of the Chairman of the Preparatory Commission on the work of the sessions during which they were discussed.

"125 ter

"It was felt that, notwithstanding the exhaustive discussions held on the hard-core issues, no solutions could be reached on these issues at this stage, until the practical difficulties of Part XI were to be addressed.

"125 quater

"The Chairman of the Preparatory Commission summed up the discussion on these hard-core issues by stating that further consideration would be given to them at an appropriate time. An exhaustive list of these issues is annexed to the present report as pending issues."

10. It was pointed out during the discussion of paragraph 69 of the draft provisional final report that the present text of this paragraph did not adequately reflect the outcome of the consideration of a proposal introduced by the European Economic Community (EEC) concerning participation in decision-making of an international organization. Therefore, the Informal Plenary decided that the present text of the paragraph should be replaced by the following text:

"The proposal mentioned in the preceding paragraph was extensively discussed. No solution was reached on it. It is recommended that further consideration be given to it by the Assembly of the Authority at an appropriate time."

11. In connection with the consideration of paragraphs 68 and 69 of the report, the Informal Plenary also agreed to delete the asterisk in rule 68 ("Voting rights") of the Final Draft Rules of Procedure of the Assembly of the Authority.

12. The Informal Plenary further agreed to introduce the following changes in the text of this part of the report:

(a) At the end of paragraph 62 "annex X to the present report" should be replaced by "the annex to the present report";

(b) In paragraph 65, line 1 should read: "With regard to rule 1 on the regular sessions of the Assembly, it was approved on the understanding that ...";

(c) In paragraph 76 a reference to the Finance Committee should be added;

(d) In paragraphs 63, 72, 78, 85, 114, 127, 132, 136 and 140, references to annexes should be replaced by references to the texts of the respective documents contained in addendum 3 to the report (LOS/PCN/WP.52/Add.3).

III. IMPLEMENTATION OF RESOLUTION II

13. In accordance with paragraph 5 of the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex), the certifying State, France (on behalf of IFREMER/AFERNOD)), India, Japan (on behalf of Deep Ocean Resources Development Co., Ltd. (DORD)) and the Russian Federation (on behalf of Yuzhmorgeologiya) submitted periodic reports to the Preparatory Commission. These reports are contained respectively in documents LOS/PCN/BUR/R.22, LOS/PCN/BUR/R.24, LOS/PCN/BUR/R.23 and LOS/PCN/BUR/R.25. In accordance with paragraph 5 of the understanding on the fulfilment of

obligations by the registered pioneer investor, COMRA and its certifying State (LOS/PCN/L.102, annex), the People's Republic of China, submitted a periodic report on the activities of COMRA (LOS/PCN/BUR/R.20). Certain delegations suggested that in the future such reports should contain as much detailed information as possible, including information on periodic expenditures and the progress made in pioneer activities. It was recognized that it was difficult at the current stage to provide annual amounts of expenditure, which in any case would constitute imperfect parameters for assessing the effort made by the registered pioneer investors. The General Committee, having considered the reports of the certifying States, took note of them.

14. The General Committee considered the letter dated 25 March 1993 from the Coordinator of the Group of registered pioneer investors on behalf of France, Japan and the Russian Federation addressed to the Chairman of the Preparatory Commission (LOS/PCN/128). The General Committee noted the statement of the authors of the letters that account should be taken of the principle of equal treatment and of the principle of non-discrimination in the implementation of the obligations of the registered pioneer investors, as reflected in the relevant documents of the Preparatory Commission. The Chairman noted that further consideration would be given to the matter by the General Committee at its next meeting and that in this respect it would give a formal decision at that time.

IV. THE TRAINING PANEL

15. The General Committee considered the report of the Training Panel. The Training Panel held eight meetings during the first week of the current session to, inter alia, select six candidates for the traineeships under the training programmes offered by India and the Russian Federation, to consider the training programme of China and that of the Interoceanmetal Joint Organization and its certifying States and to consider the training programme submitted by Germany.

16. The training programmes of China and the Interoceanmetal Joint Organization and its certifying States were approved by the Panel following the introduction of certain modifications. Those revised programmes are contained in documents LOS/PCN/TP/1993/CRP.13/Rev.1 and LOS/PCN/TP/CRP.12/Rev.1, respectively. The draft note verbale (LOS/PCN/BUR/R.27) announcing those programmes was also approved by the Panel.

17. The Panel selected five candidates for the traineeships under the training programmes offered by India and the Russian Federation, i.e., two candidates from two African countries, one candidate from one country from the Latin American and the Caribbean region, and two candidates from one Asian country. The names of the candidates selected and recommended for designation by the Preparatory Commission in respect of the traineeships under the training programmes of India and the Russian Federation are contained in document LOS/PCN/BUR/R.26. In the absence of a qualified candidate in chemical engineering offered under the training programme of India, it was decided to defer that traineeship and to announce it in a new note verbale. The draft note verbale which was approved by the Panel is contained in document LOS/PCN/BUR/R.28.

18. With regard to the training programme submitted by Germany (LOS/PCN/TP/1993/CRP.15), the Panel was of the view that further details were required on the type of training to be offered and the disciplines involved. It requested that the programme be revised to conform to the format of the programmes which had already been adopted.

19. The Panel took note of a report submitted by France on the implementation of the French training programme (LOS/PCN/TP/1993/CRP.16).

20. On 31 March 1993, the General Committee considered the report of the fourth meeting of the Training Panel (LOS/PCN/BUR/R.29) and took note of it. It approved the recommendation and designated five candidates selected by the Panel for the traineeships under the training programmes offered by India and the Russian Federation. The General Committee also took note of the note verbale on the traineeships offered under the training programmes of China and the Interoceanmetal Joint Organization and its certifying States, and the note verbale on the traineeship in chemical engineering offered under the training programme of India.

21. The Chairman will consult by telephone or facsimile with the delegations concerned in order to enable the Training Panel to meet at an appropriate time.

22. The General Committee reaffirmed its decision to invite any State member or observer in the Preparatory Commission to submit candidates for the training programme. In the process of selection of trainees, however, the Training Panel should give priority to candidates presented by States members of the Preparatory Commission.

V. FUTURE WORK OF THE PREPARATORY COMMISSION

23. The Preparatory Commission decided, in the light of the recommendation of the General Committee, on the following future programme of its work:

(a) Not to hold any more meetings in the course of this year;

(b) To make provision every year for the United Nations servicing of a two-week annual session of the Preparatory Commission, until the entry into force of the Convention;

(c) The need for the effective holding of the annual session of the Preparatory Commission will be decided by the Chairman of the Preparatory Commission in consultation with the Chairmen of the Special Commissions, the Chairmen of regional groups and interest groups. The Chairman of the Preparatory Commission will also decide, on the basis of such consultations, the precise date for such a meeting;

(d) The General Committee, acting on behalf of the Preparatory Commission as its executive organ for the implementation of resolution II, will meet for two or three days annually to consider matters related to the implementation of resolution II and to continue the monitoring of the implementation of the obligations of the registered pioneer investors.

24. As far as possible, efforts should be made to have the meetings of the General Committee and of the Training Panel coincide with the annual meeting of the Preparatory Commission.

VI. CONSIDERATION OF THE DRAFT PROVISIONAL FINAL REPORTS OF THE PREPARATORY COMMISSION

25. The Plenary of the Preparatory Commission received the statements of the Chairmen of the Special Commissions on the consideration of the respective draft provisional final reports that are relevant to their mandates. The Chairman of the Preparatory Commission introduced his statement on the work of the Informal Plenary on its draft provisional final report.

26. Having thus considered these statements, the Preparatory Commission decided to take note of them.

27. The Preparatory Commission decided to take note of the draft provisional final reports, as amended.

28. A revised version of these reports incorporating the amendments made thereon during this session will be prepared by the Secretariat and will be issued, at the appropriate time, as a consolidated provisional final report of the Preparatory Commission.